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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/693,412	10/25/2003	M. Lou Marsh		1917
38445	7590	11/02/2005		
M. LOU MARSH 4610 RANCHO REPOSO DEL MAR, CA 92014			EXAMINER HANEY, RICHAE LEE	
			ART UNIT	PAPER NUMBER
			3765	
DATE MAILED: 11/02/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/693,412

Applicant(s)

MARSH ET AL.

Examiner

Richale L. Haney

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 October 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 3/7/2005.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Specification***

1. The disclosure is objected to because of the following informalities: subject headings are improperly underlined.

Appropriate correction is required.

### ***Claim Objections***

2. Claims 2 – 4, 6, 7 and 9 are objected to because of the following informalities: claims are to be in the form of a single sentence and the periods placed after the number should be comma's rather than periods. Appropriate correction is required.
3. Claims 1 and 5 are objected to because of the following informalities: applicant refers to an inferior rim portion to make clear the position of parts in respect to the rim. It appears to be a grammatical error and should read interior. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

5. Claims 1, 5, 8 and 10 and all dependent claims are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In terms "or otherwise" and "possibly" does not define the metes and bounds of the claim and renders the claim indefinite. Claims, 1 and 5 the term "may be"

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does not define the metes and bounds of the claim limitation. In claims 3 and 4 the term "otherwise" is unclear and does not indicate the metes and bounds of the limitation making the claim indefinite.

6. Claims 1, 5, 8, 10 and all dependent claims are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The limitation "the" in reference to "names/logos", "base", "name, date or location", "rivals or contenders", "other of", "two teams" and "competition." There is insufficient antecedent basis for this limitation in the claim. The names/logos, base, name, date, location, rivals or contenders, other of, two teams, and competition have not been positively recited in a prior portion of the claim and therefore are lacking antecedent basis, making the limitation unclear. Applicant is advised to check for similar improper recitations in the claims.

7. Claims 6 and 7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 6 and 7 are independent claims of both claims 1 and 2, and are considered improper. The examiner suggests reciting the limitation in the alternative form in order to make the claim limitation proper.

### ***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1, 5, 6 and 7, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Maya (US 2003/0093851) in view of Wittcoff (US D168,920).

The device of Maya shows a self-adjusting (Figure 7), and non-self adjusting (Figure 8) baseball style hat comprising a crown portion that consist of multiple laterally seamed substantially triangular fabric panels or gores (Figure 5, 32), of which only two laterally located gores (Figure 5, 18 and 20) are made of a bi-axially stretchable material (Paragraph 0026 and 0034), it is noted by the examiner that Maya does not disclose that the elasticity is limited to stretch in a specific direction and is therefore interpreted to stretch both in the weft and the warp directions. The fabric gores of the invention create a dome shaped portion (Figure 4) for receiving the head of the wearer and comprises an outer and inner surface (Figure 4, Figure 5) that is divided into front, rear and lateral sections (Figure 5, 22, 24, 18, 20; paragraph 0023). The device of Maya shows a headband composed of primarily of non-stretchable fabric, having laterally incorporated elasticity to provide adjustment on the interior surface (Figure 7; paragraph 0032), it is noted by the examiner in regard to the primary portion of the headband being formed from a non-stretch material, it has been interpreted that the fabric of Maya is made from a non-stretch fabric because the device of Maya is drawn to the elasticized portions providing stretch to the cap, enabling it to be self adjusting; moreover, it is noted that Maya did not disclose a limitation as to the direction of the stretch portions and is therefore interpreted by the examiner to stretch in both the warp and weft directions.

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The invention of Maya shows two functionally interchangeable, identically shaped and sized visors of substantially rigid material positioned opposite the other at the mid-points of the face of the front and rear sections of the crown portion each having an upper and lower surface, wherein each visor is separated on each side of the crown by the stretchable portions located on the inner surface of the rim (Figure 4, Figure 7) providing shade for both the face and the neck of the wearer. The device of Maya substantially describes the claimed invention but is lacking front and rear sections represented by coloration of fabric to indicate differences of indicia. In regard to the content or specification of who/what the indicia represents no additional patentable weight has been granted; it would have been understood to change the indicia to fit the environment in which the cap is to be worn. The device of Wittcoff shows a hat separated wherein the front and rear sections are separated by color as seen in Figure 1, and an area on the outer surface is provided for attaching two different types of indicia (Figure 1) on both the front and rear sections of the crown positioned above the front and rear visor as shown in the drawings. The visor of the front portion corresponds to with the color of the front crown portion, and the visor located at the rear corresponds with the color of the rear crown (Figures 1 and 2). Neither the device of Maya or Wittcoff disclose the color of the under side portions of the front and rear visor; however, the claim limitation requires that the under surface be the same or different and therefore has been met by the prior art references. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Maya by

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utilizing the coloration and indicia taught by Wittcoff in order to obtain a distinct separation between front and rear portions of the invention.

10. Claims 2 – 4, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Maya and Wittcoff as applied to claims 1 and 5 above, and further in view of Cho. The modified device of Maya discloses all of the claimed invention except for stretch achieved by uni-axially stretchable fabric. The device of Cho discloses both gores and a sweatband where stretch is achieved by using uni-axially stretchable fabric (Column 4, lines 56 –60). It would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify the device of Maya by using uni-axially stretchable fabric in place of the bi-axially stretchable fabric in order to reduce the cost because less raw material would be used to manufacture the fabric of the cap.

11. Claims 8 and 10, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Maya and Wittcoff as applied to claims 1 and 5 above, and further in view of Gore (US 6,138,279). The device of Maya shows a self-adjusting hat comprising a crown portion that consists of multiple laterally seamed substantially triangular fabric panels or gores forming a fabric top and side cover portions (Figure 5, 32), of which only two laterally located gores (Figure 5, 18 and 20) are made of a bi-axially stretchable material (Paragraph 0026 and 0034), it is noted by the examiner that Maya does not disclose a limitation of stretch in a specific direction and is therefore interpreted to stretch both in the weft and the warp directions. The fabric gores of the invention create a portion for receiving the head of the wearer and comprising an outer and inner surfaces and a lower peripheral edge (Figure 4, Figure 5) that is divided into

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front, rear and lateral sections (Figure 5, 22, 24, 18, 20; paragraph 0023). The device of Maya shows a headband composed of primarily of non-stretchable fabric, having laterally incorporated elasticity to provide adjustment on the lower peripheral edge's interior surface (Figure 7; paragraph 0032), it is noted by the examiner in regard to the primary portion of the headband being formed from a non-stretch material it has been interpreted that the fabric of Maya is made from a non-stretch fabric because the device of Maya is drawn to the elasticized portions providing stretch to the cap enabling it to be self adjusting; moreover, it is noted that Maya did not disclose a limitation as to the direction of the stretch portions and is therefore interpreted by the examiner to stretch in both the warp and weft directions. The device of Maya substantially describes the claimed invention but is lacking front and rear sections represented by coloration of fabric to indicate differences of indicia and a broad brim substantially oval in shape reinforced by stiffening attached by concentric row of stitching. In regard to the content or specification of what the indicia represents no additional patentable weight has been granted, because it would be easily understood to change the indicia to fit the environment in which the cap is to be worn. The device of Wittcoff shows a non-domed shaped crown portion (Figure 2) wherein the front and rear sections are separated by color as seen in Figure 1, a broad substantially oval shaped brim (Figure 1) and an area on the outer surface is provided for attaching two different types of indicia (Figure 1) on both the front and rear sections of the crown positioned above the front and rear brim as shown in the drawings. The brim of the front portion corresponds to with the color of the front crown portion, and the brim at the rear corresponds with the color of the rear crown



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(Figures 1 and 2). Neither the device of Maya or Wittcoff disclose the color of the under side portions of the front and rear visor or brim; however, the claim limitation requires that the under surface be the same or different and therefore has been met by the prior art references. The device Wittcoff does not disclose the brim is reinforced with stiffeners attached by concentric rows of stitching. The device of Gore teaches an insert used as a stiffening device for a brim attached with two to eight rows of concentric stitching (Column 1, lines 25 –30 and Figure 1). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Maya by utilizing the coloration, indicia, dome and brim styles taught by Wittcoff and the stiffening device and means for attachment taught by Gore in order to obtain a distinct separation between front and rear portions of the invention and providing a brim the will maintain its shape in adverse weather conditions (Column 1, lines 51 –54).

12. Claim 9, as best understood, is rejected under 35 U.S.C. 103(a) as being unpatentable over Maya, Wittcoff and Gore as applied to claims 8 and 10 above, and further in view of Cho. The modified device of Maya discloses all of the claimed invention except for stretch achieved by uni-axially stretchable fabric. The device of Cho discloses a headband where stretch is achieved by using uni-axially stretchable fabric (Column 4, lines 56 –60). It would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify the device of Maya by using uni-axially stretchable fabric in place of the bi-axially stretchable fabric in order to reduce the cost because less raw material would be used to manufacture the fabric of the cap.

***Conclusion***

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Verhoeven (US 6,658,664), Ng (US 2003/0041366), Lee (US 6,347,410), Lipkin (US 4,662,007) and Beckerman (US 5,615,415) show headwear wherein the stretch is achieved either uni-axially or bi-axially.

Lorentzen, Jr. (US D315,439), Martinez (US D363,596), Oates (US D340,796) and Heyward, Jr. (US 6,243,877) disclose headwear with multiple visors.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richale L. Haney whose telephone number is 571-272-8689. The examiner can normally be reached on M-F 8:00 - 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John J. Calvert can be reached on 571 -272-4983. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Richale L. Haney

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Patent Examiner

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October 26, 2005

RLH

A handwritten signature in black ink, appearing to read "K Moran", with a stylized, cursive script.

**KATHERINE MORAN**  
**PRIMARY EXAMINER**